IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 546 OF 2004.

Babasaheb Bapusaheb Ghorpade & ors. ... Appellants.
Versus.
Shivram Nana Patil and others. ... Respondents.

Shri D.S.Sawant for the Appellants.

Shri M.R.Suryawanshi for the Respondents.

CORAM : ABHAY S.OKA, J.

DATED : 21st April, 2006.

P.C.:

1. Heard Shri Sawant for the Appellants. The suit for perpetual injunction filed by the Appellants has been dismissed by the trial Court. The said decree has been confirmed by the Appellate Court.

2. Shri Sawant submitted that the foundation of the title of the Appellants was a lease deed which was produced and proved on the record of the trial Court. He submitted that even the revenue authorities have issued Sanad in the name of the Appellants. He submitted that there was sufficient evidence on record to prove the ownership of the Appellants. He submitted that even assuming that the Appellants have not established their possession, as the trial Court has held that the Defendants are the owners of the property, the Appellants will not be in a position to file a

substantive suit on title. He submitted that the finding of title in favour of the Respondents is only on the basis of the Grampanchayam record.

3. I have considered the submissions. The Courts below after consideration of the oral and documentary evidence on record came to the conclusion that the lease deed on which the reliance was placed by the Appellants does not relate to the suit property. The Appellate Court also found that Sanad in respect of the same property was issued in favour of the Respondents and the said Sanad was cancelled without notice to the Respondents and thereafter, a Sanad was issued in the name of the Appellants. In any event only on the basis of the said Sanad issued by the Revenue authorities, the Appellants could not have established title.

4. So far as the finding regarding lease deed is concerned, I find that the Courts below have appreciated the oral as well as documentary evidence on record and have come to the conclusion that the description of the property covered by the lease deed does not relate to the suit property. No interference can be made with such finding of fact in a Second Appeal.

5. The suit for injunction filed by the Appellants was based on title. Once the Appellants failed to establish title, the title of the Respondents/

Defendants may not be relevant. No substantial question arises. The second appeal is dismissed. No order as to costs.

Judge.